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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/409,617	10/01/1999	DAVID MICHAEL SHACKELFORD	TU9-99-029	5644

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KONRAD RAYNES & VICTOR, LLP.
ATTN: IBM37
315 SOUTH BEVERLY DRIVE, SUITE 210
BEVERLY HILLS, CA 90212

EXAMINER

LANIER, BENJAMIN E

ART UNIT	PAPER NUMBER
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2132

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/409,617

Applicant(s)

SHACKELFORD, DAVID MICHAEL

Examiner

Benjamin E. Lanier

Art Unit

2132

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


GILBERTO BARRÓN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 3. NOTE: maintaining keys of computer systems authorized to access software to be distributed.

Continuation of 11. does NOT place the application in condition for allowance because: Mr. Victor appears to have misunderstood the Examiner's comments with regards to this amendment. The Examiner stated that amendments if entered would overcome the written description rejection, but stated that these amendments would not be entered after final because they constitute new issues which require further search and consideration.

Applicant's arguments that there is no teaching in the prior art of the keys being used to decrypt encrypted responses is not persuasive because Takahashi discloses an encrypted message is sent from the client to the store side and decrypted with the shared key (Col. 12, lines 20-30).

Applicant's argument that Takahashi does not disclose processing the decrypted response to determine whether the customer is permitted to access the software is not persuasive because Takahashi discloses checking the user information storage unit for a shared key that matches the ID of the requestor and if there is no match the order is not accepted (Col. 12, lines 20-24). If there is a match the user is subsequently granted access to the software (Col. 12, line 25 - Col. 13, line 33).

Applicant's argument that Ananda does not disclose a rental manager or other related component, which is in the user computer, maintain keys for authorized computer systems of the software, where the keys are used to decrypt encrypted responses and that the second computer (user computer) is not authorized to access the software if there is not one maintained key for the second computer system that is capable of decrypting the encrypted response is not persuasive because it is not a claimed limitation.

Applicant's argument that the prior art does not disclose determining whether the decrypted response includes a generated message the first computer system sent to the user is not persuasive because Takahashi discloses checking the user information storage unit for a shared key that matches the ID of the requestor and if there is no match the order is not accepted (Col. 12, lines 20-24). If there is a match the user is subsequently granted access to the software (Col. 12, line 25 - Col. 13, line 33).

Applicant's argument that the prior art does not disclose determining whether a message included in the encrypted response matches the generated message, wherein the second computer is authorized to access the software if the message included in the encrypted response matches the generated message is not persuasive because Takahashi discloses checking the user information storage unit for a shared key that matches the ID of the requestor and if there is no match the order is not accepted (Col. 12, lines 20-24). If there is a match the user is subsequently granted access to the software (Col. 12, line 25 - Col. 13, line 33).

Applicant's argument that the prior art does not disclose a user computer providing a key to a distributor computer, and then transmitting a response to the first computer that can be decrypted by the sent key at the distributor computer, and then receiving access to the requested software in response to the encrypted response message is not persuasive because Ananda and Takahashi references disclose a secure software rental system wherein a user requests software from a central server. The central server then generates an encrypted message and sends it to the user (Ananda, Col. 11, lines 45-60), which meets the limitation of generating an encrypted message and transmitting it. The user receives and decrypts the message and sends an encrypted response to the central server (Ananda, Col. 12, lines 15-34), which meets the limitation of receiving an encrypted response from the second computer system. The central server receives the encrypted message and decrypts it. The central server then compares the message using a password correlation algorithm against the stored information regarding the user processor clock time (random component, time stamp), the user identification password, and the authorization verification password (Ananda, Col. 12, lines 36-46), which meets the limitation of determining whether there is a code made available by the second computer system capable of encrypting the received encrypted response, decrypting the encrypted response with the determined code if there is one determined code, and processing the decrypted response to determine whether the second computer system is authorized to access the software. Once authorized the user is able to receive the application software (Ananda, Col. 12, lines 47-53), which meets the limitation of permitting the second computer system access to the software after determining that the second computer system is authorized to access the software. Ananda does not disclose that the key used for decryption is made available by the second computer. Takahashi discloses a software distribution system wherein a shared key is generated at a user computer and is transmitted to the software store (Takahashi, Col. 2, lines 10-25) at registration time (Takahashi, Col. 5, lines 32-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the registration process of Ananda to include the delivery of a cryptographic key to the software server in order to establish encrypted communication between the server and the user as taught in Takahashi (Col. 2, line 12).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).